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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ANTHONY B. GAROOSI et al.,

Cross-Complainants and Appellants,

v.

MICHAEL F. GHODSI,

Cross-Defendant and Respondent.

B194493

(Los Angeles County  
Super. Ct. No. SC082662)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph S. Biderman, Judge. Appeal dismissed.

Borchard & Callahan, Thomas J. Borchard, Murray Robertson and James M. Hester for Cross-Complainants and Appellants.

Resch Polster Alpert & Berger, Michael C. Baum and Andrew V. Jablon for Cross-Defendant and Respondent.

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Appellants challenge the trial court's dismissal of their first amended cross-complaint after respondent's demurrer was sustained without leave to amend. We conclude the appeal is premature, and dismiss it.

### **FACTUAL AND PROCEDURAL SUMMARY**

Beginning in 1993, Anthony Garoosi and Christopher Garoosi (the Garoosis) and Michael Ghodsi formed several joint venture partnerships for the purchase, development, and sale of real property. In August 2004, Ghodsi filed a complaint against the Garoosis and five of these joint ventures, asserting causes of action for breach of fiduciary duty, accounting, and declaratory relief. According to the general allegations of the complaint:

"24. In 1996, subsequent to the creation of the first joint venture . . . but prior to the creation of the other joint venture entities or the purchase of Properties 2-5, Ghodsi independently purchased a home as his personal residence at 1861 Veteran Avenue in Los Angeles, California. Ghodsi lived in the home from 1996 through 1999.

"25. In 1999, the neighboring single family home was available for sale, and Ghodsi independently purchased the property. Subsequently, Ghodsi combined the two properties into one lot and developed it into a 12 unit condominium building (the 'Veteran Property'). In late 2001 through the early part of 2002, Ghodsi sold each of the condominium units.

"26. Anthony and Christopher were at all times aware of Ghodsi's purchase and development of the Veteran Property.

"27. On or about July 27, 2004, Ghodsi received a certified letter from counsel for Christopher asserting that Ghodsi breached his fiduciary duties owed to Christopher and the Joint Venture by independently purchasing, developing, and selling the Veteran Property. Further, demand was made for payment by Ghodsi to the Joint Venture of the proceeds from the sale of the condominiums at the Veteran Property."

In the third cause of action, Ghodsi alleged:

"40. An actual controversy has arisen and now exists between Ghodsi and Defendants in that Defendant Christopher alleges and Ghodsi denies that Ghodsi

breached fiduciary duties purportedly owed by him to Anthony, Christopher, and the Joint Venture by allegedly competing with the Joint Venture and retaining for his own use and benefit the profits from the development and sale of the Veteran Property.

“41. Ghodsi desires a judicial determination of the respective rights and duties of Ghodsi, Anthony, and Christopher with respect to the Joint Venture and the Agreements. In particular, Ghodsi desires a declaration that he has not breached any fiduciary duty to Anthony, Christopher, or the Joint Venture.

“42. Ghodsi further desires a judicial determination of the respective rights and duties of Ghodsi, Anthony, Christopher, and the Joint Venture with respect to the Veteran Property. In particular, Ghodsi desires a declaration that neither Anthony, Christopher, nor the Joint Venture had an interest in the Veteran Property. Further, that neither Anthony, Christopher, nor the Joint Venture have or had any entitlement to income earned by Ghodsi by way of his ownership of the Veteran Property or by way of his sale of the Veteran Property.”

On January 27, 2006, the Garoosis answered the complaint, and filed a cross-complaint against Ghodsi. In paragraph 13, they alleged: “In 1999, CHRISTOPHER and ANTHONY discovered that GHODSI had purchased the Veteran’s property and was in the process of developing condominiums on the land.” In paragraph 15, they alleged: “In 2000, due to GHODSI’s wrongful conduct in intentionally deceiving ANTHONY and CHRISTOPHER and exploiting an opportunity of the partnership, as well as his failure to contribute his experience in construction and development to the partnership, CHRISTOPHER and ANTHONY offered to buy out GHODSI’s interest in the partnership.” They asserted Ghodsi breached his fiduciary duty and intentionally deceived them by purchasing the Veteran Property and developing it. By this conduct, they alleged Ghodsi usurped a business opportunity that the partnership wished to pursue, and competed with the partnership.

Ghodsi demurred, asserting the cross-complaint was barred by the statute of limitations. The Garoosis filed a first amended cross-complaint, alleging that “[i]t was during 2004 that CHRISTOPHER and ANTHONY, at the direction of their legal counsel,

ran a title profile on the Veteran's property. It was at that time they finally confirmed their suspicions that GHODSI owned an interest in not only the property he purchased in 1996 but also the adjoining Veteran's property."

Ghodsí again demurred, arguing that the Garoosis could not rectify the fatal allegation in their original complaint that they had learned of his purchase of the property in 1999 by simply alleging a different date. The trial court sustained the demurrer without leave to amend, and dismissed the cross-complaint. With the complaint still pending in the trial court, the Garoosis have appealed the dismissal of their cross-complaint. We requested, and have received, additional briefing from the parties with respect to the finality of the judgment. As we shall explain, we conclude the judgment is not final for purposes of appeal.

## **DISCUSSION**

Under the one final judgment rule, an appeal may be taken from a final judgment, but not from an interlocutory judgment. (Code Civ. Proc., § 904.1, subd. (a).) A judgment that disposes of fewer than all of the causes of action framed by the pleadings is interlocutory and not yet final as to any parties between whom another cause of action remains pending. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741.)

The pending complaint in this action was brought by Ghodsí against the Garoosis, the same parties named in the cross-complaint.<sup>1</sup> It arises in part from the same subject matter raised in the cross-complaint, Ghodsí's independent purchase of the Veteran Property on his own behalf, rather than on behalf of the joint venture partnership with the Garoosis. In his complaint, Ghodsí seeks a determination of the respective rights of the parties in the purchase and development of the Veteran Property. The cross-complaint requires the same determination, since it alleges Ghodsí's purchase and development of the Veteran Property constituted a usurpation of a business opportunity which Ghodsí

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<sup>1</sup> Also named as defendants are five of the joint ventures involving these individuals.

knew the partnership would have liked to pursue, in breach of Ghodsi's fiduciary duty to the Garoosis.

Thus, it appears the judgment is not yet final for purposes of appeal. (*Morehart v. County of Santa Barbara, supra*, 7 Cal.4th 725, 741.) For this reason, we shall dismiss the appeal as premature.

This court has the power to treat the purported appeal as a petition for writ of mandate, but will not exercise that power except under unusual circumstances. (*Olson v. Cory* (1983) 35 Cal.3d 390, 401.) We find no such circumstances are present in this case.

### **DISPOSITION**

The appeal is dismissed. Respondent is to have his costs. Respondent's request for sanctions is denied.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.